

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

REBECCA S. FACTOR,)	CASE NO. 1:07 CV 1072
)	
Plaintiff,)	
)	
v.)	JUDGE DONALD C. NUGENT
)	
SCHWEBEL BAKING COMPANY,)	
)	
Defendant.)	<u>ORDER</u>

For the reasons stated in the Memorandum Opinion filed contemporaneously herewith, Defendant's Motion for Summary Judgment (Docket #26) is hereby GRANTED. The Court has reviewed the evidence in this case and the briefs of the Parties at length, including a thorough and exhaustive review of each of the depositions filed with the Court, resolving any material disputes in the testimony in favor of Ms. Factor. While the Court notes that there are inconsistencies between the testimony of Mike Elenz and Grant West, and inconsistencies between the testimony of Mike Elenz and Paul Schwebel, the inconsistencies are immaterial. Aside from the timing of Ms. Factor's termination, nothing in the record suggests that Schwebel was motivated by Ms. Factor's FMLA leave to terminate her employment. Further, there is no evidence by which a jury could reasonably find that Mr. Elenz's asserted lack of trust in Ms. Factor was a mere pretext for FMLA discrimination and/or retaliation. Arguments by Ms. Factor that her medical expenses and hypothetical future medical problems motivated her discharge have no basis in fact. Accordingly, Ms. Factor's first cause of action, alleging retaliation and/or

discrimination for taking FMLA leave, fails as a matter of law.

With regard to Ms. Factor's spoliation claim, despite the presence of a tape recorder on the table during the post-investigation interview, there is no evidence that an audio tape was produced. Ms. Ylonen testified that she took handwritten notes, which she subsequently typed. There is no evidence that an audio tape was willfully destroyed by Schwebel in the face of pending or probable litigation. Therefore, Ms. Factor's spoliation and punitive damages claims fail as a matter of law.

This case is hereby TERMINATED.

IT IS SO ORDERED.

s/Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: June 9, 2008